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Office Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1958
No. 981

ELIAS MILLER, PAUL MILLER, ANNA MILLER and HELEN MILLER, and ELIAS MILLER and PAUL MILLER, as Executors of the Estate of GEORGE MILLER, Deceased,
Petitioners,

vs.

IRVING SULMEYER, Trustee in Bankruptcy of the Estate of DELCON CORPORATION, Bankrupt,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit After Judgment in a Bankruptcy Proceeding.

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I.

Under the California law (which governs the substantive property rights of a mortgagee) creditors of a mortgagor coming into existence after the recordation of a chattel mortgage cannot attack its validity on the basis of its prior delayed recordation 19

II.

The opinion of the Court of Appeals is premised on an impermissible interpretation of the precise and narrow holding of this court in the Moore decision. The Moore decision attacked the validity of a chattel mortgage which was conclusively fraudulent and a nullity in its inception under the California Civil Code Section 3440 then in force 20

III.

A chattel mortgage recorded more than four months preceding bankruptcy is not vulnerable to an attack by a trustee in bankruptcy for the benefit of creditors who came into existence after the recordation of a chattel mortgage in absence of proof that the chattel mortgage was fraudulent in its inception against creditors 22

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IV.

Bankrupt's subsequent creditors were charged with notice and knowledge of petitioners' superior mortgage lien, which has been perfected more than four months before bankruptcy; and they were aware of the existence of petitioners' superior mortgage lien when they extended credit to the bankrupt. In equity and good conscience their claims must be subordinated to petitioners' mortgage lien 25

V.

The equitable doctrine precluding unjust enrichment govern the ... ies of the trustee's petition comprehensively discussed in the decision of the referee 27

VI.

Petitioners' repossession of the located mortgage property was lawful under the federal rule stated in Appendix E. Their repossession did not give rise to an action in conversion; and the affirmative judgment against petitioners in the sum of $82,500.00 cannot be sustained 29

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